

§740.1**INTRODUCTION**

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) Scope

A “License Exception” is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, Three, or Eight as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and items subject to the EAR that would require a license based on the embargo policies described in part 746 of the EAR. If your export or reexport is subject to General Prohibition Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Nine, or Ten, then no License Exceptions apply.

(b) Certification

By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception described in the EAR have been met. Please refer to part 758 of the EAR for clearance of shipments and documenting the use of License Exceptions.

(c) License Exception symbols

Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) Shipper's Export Declaration or Automated Export System Record

You must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (e.g., LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (e.g., 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under §740.9(b)(3), are excepted from this requirement. See §758.1 of the EAR for Shipper's Export Declaration requirements or Automated Export System (AES) requirements.

(e) Destination Control Statement

You may be required to enter an appropriate Destination Control Statement on commercial documents in accordance with Destination Control Statement requirements of §758.6 of the EAR.

(f) Recordkeeping

Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

§740.2**RESTRICTIONS ON ALL LICENSE EXCEPTIONS**

(a) You may not use *any* License Exception if any one or more of the following apply:

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended

export does not qualify for a License Exception.

(2) The export or reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BIS.

(3) The item is for surreptitious interception of wire or oral communications, controlled under ECCN 5A980, unless you are a U.S. Government agency (see §740.11(b)(2)(ii) of this part, Governments (GOV)).

(4) The commodity you are shipping is a specially designed crime control and detection instrument or equipment described in §742.7 of the EAR and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (see Supplement No. 1 to part 740), unless the shipment is authorized under License Exception BAG, §740.14(e) of this part (shotguns and shotgun shells).

(5) The item is controlled for missile technology (MT) reasons, except that the items described in ECCNs 6A008, 7A001, 7A002, 7A004, 7A101, 7A102, 7A103, 7A104, 7B001, 7D001, 7D002, 7D003, 7D101, 7D102, 7E003, or 7E101, may be exported as part of a manned aircraft, land vehicle or marine vehicle or in quantities appropriate for replacement parts for such applications under §740.9(a)(2)(ii) (License Exception TMP for kits consisting of replacement parts), §740.10 (License Exception RPL), §740.13 (License Exception TSU), or §740.15(c) (License Exception AVS for equipment and spare parts for permanent use on a vessel or aircraft).

(6) The export or reexport is to an embargoed destination (Cuba, Iran, Iraq, and Libya), unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular embargoed country in part 746 of the EAR.

(7) **“Space qualified” items.** Commodities defined in 3A001.b.8 (Traveling Wave Tube

Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b; “software” for commodities defined in 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b and controlled under ECCNs 3D001 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6D001, 6D002, 6D104, 6D991; and “technology” for commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b and controlled under ECCNs 3E001, 6E001, 6E002, 6E101, 6E102, 6E991.

(8) The item is controlled under ECCNs 2A983, 2D983 or 2E983 and the License Exception is other than:

(i) RPL, under the provisions of §740.10, including §740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740));

(ii) GOV, restricted to eligibility under the provisions of §740.11(b)(2)(ii); or

(iii) TSU, under the provisions of §740.13(a) and (c).

●(9) The item is a QRS11-00100-100/101 Micromachined Angular Rate Sensor controlled for RS reasons under ECCN 7A994.

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BIS to stop a shipment or an export transaction at any stage of its progress, e.g., in order to prevent an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of the shipment at any port of call.

(c) BIS may by informing the exporter, suspend or revoke any License Exception in order to comply with U.S. Wassenaar obligations. In addition, BIS may inform an exporter, that before using any License Exception, a notice be submitted with BIS concerning the proposed

export.

§740.3

SHIPMENTS OF LIMITED VALUE (LVS)

(a) Scope

License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by "LVS - \$(value limit)" on the CCL.

(b) Eligible Destinations

This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) Definitions

(1) Order. The term "order" as used in this §-740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) Net value: for LVS shipments. The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded.

The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the "net value" of the contained commodity immediately below the description of the commodity.

(3) Single shipment. All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) Additional eligibility requirements and restrictions

(1) Eligible orders. To be eligible for this License Exception, orders must meet the following criteria:

(i) *Orders must not exceed the applicable "LVS" dollar value limits.* An order is eligible for shipment under LVS when the "net value" of the commodities controlled under the same entry on the CCL does not exceed the amount specified in the "LVS" paragraph for that entry. An LVS shipment may include more than one eligible order.

(ii) *Orders may not be split to meet the applicable LVS dollar limits.* An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the

applicable LVS dollar value limit, may be split among two or more shipments.

(iii) *Orders must be legitimate.* Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) Restriction on annual value of LVS orders.

The total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN; however, there is no restriction on the number of shipments provided that value is not exceeded. This annual value limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) Orders where two or more LVS dollar value limits apply. An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS dollar value limit specified for that entry.

Example to paragraph (3): An order includes commodities valued at \$8,000. The order consists of commodities controlled under two ECCN entries, each having an LVS value limit of \$5000. Commodities in the order controlled under one ECCN are valued at \$3,500 while those controlled under the other ECCN are valued at \$4,500. Since the net value of the commodities controlled under *each* entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) Prohibition against evasion of license requirements. Any activity involving the use of

this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1)(ii) and (iii) of this section.

(5) Exports of encryption items. For components or spare parts controlled for “EI” reasons under ECCN 5A002, exports under this License Exception must be destined to support an item previously authorized for export.

(e) Reexports

Commodities may be reexported under this License Exception, provided that they could be exported from the United States to the new country of destination under LVS.

(f) Reporting requirements

See §743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception LVS.

●§740.4

**SHIPMENTS TO COUNTRY
GROUP B COUNTRIES (GBS)**

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by “GBS - Yes” on the CCL. See §743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception GBS.

●§740.5

CIVIL END-USERS (CIV)

License Exception CIV authorizes exports and reexports where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by "CIV - Yes" on the CCL, provided the items are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea. (See Supplement No. 1 to part 740.) CIV may not be used for exports and reexports to military end-users or to known military uses. Such exports and reexports will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR. A license is also required for transfer to military end-users or end-uses in eligible countries of items exported under CIV. See §743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception CIV.

§740.6

**TECHNOLOGY AND SOFTWARE
UNDER RESTRICTION (TSR)**●(a) *Scope*

License Exception TSR permits exports and reexports of technology and software where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by "TSR - Yes" in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting under this License Exception.

(1) Required assurance for export of

technology. You may not export or reexport technology under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will not:

(i) Reexport or release the technology to a national of a country in Country Groups D:1 or E:2; or

(ii) Export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, §736.2(b)(3) of the EAR); or

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

(2) Required assurance for export of software.

You may not export or reexport software under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, §736.2(b)(3) of the EAR).

(3) Form of written assurance. The required assurance may be made in the form of a letter or

any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) Other License Exceptions. The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) Reporting requirements

See §743.1 of the EAR for reporting requirements for exports of certain items under License Exception TSR. Note that reports are not required for release of technology or source code subject to the EAR to foreign nationals in the U.S. under the provisions of License Exception TSR.

§740.7

COMPUTERS (CTP)

(a) Scope

License Exception CTP authorizes exports and reexports of computers, including “electronic assemblies” and specially designed components therefor controlled by ECCN 4A003, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception CTP

eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003.a or .b, and “electronic assemblies” under ECCN 4A003.c, *except* for parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a).

(b) Restrictions

(1) Related equipment controlled under 4A003.d and .g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, except that commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(3) Computers eligible for License Exception CTP may not be reexported or retransferred without prior authorization from BIS, i.e., a license, a permissive reexport, another License Exception, or “No License Required”. This restriction must be conveyed to the consignee, via the Destination Control Statement, see §758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination.

(c) Computer Tier 1

(1) Eligible countries. The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe. As of May 2, 2002, Latvia is a Computer Tier 1 country.

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefor are eligible for License Exception CTP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(d) Computer Tier 3

(1) Eligible countries. The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen, and Federal Republic of Yugoslavia (Serbia and Montenegro). As of May 2, 2002, Latvia is moved to Computer Tier 1.

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefor having a CTP less than or equal to 190,000 MTOPS are eligible for License Exception CTP to Tier 3 destinations, subject to the restrictions in paragraphs (b) and (d)(3) of this section.

(3) Eligible exports. Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under §744.2, §744.3, §744.4, and §744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) Reporting requirements

See §743.1 of the EAR for reporting requirements of certain items under License Exception CTP.

§740.8**KEY MANAGEMENT INFRASTRUCTURE
(KMI)*****(a) Scope***

License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) Eligible commodities and software.

(1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate "License Exception KMI" in block 9 on Form BIS-748P. Submit the original request to BIS in accordance with §748.3 of the EAR and send a copy of the request to:

Attn: KMI Encryption Request Coordinator
9800 Savage Road, Suite 6131
Fort Meade, MD 20755-6000

(c) Eligible destinations. License Exception KMI is available for all destinations, except destinations in Country Group E:1.

(d) Reporting requirements.

(1) You must provide semiannual reports to BIS identifying:

(i) Ultimate consignee; specific end-user name and address, if available; and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than February 1 and no later than August 1 of any given year.

§740.9**TEMPORARY IMPORTS, EXPORTS, AND
REEXPORTS (TMP)**

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) Temporary exports

(1) **Scope.** You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as *temporary exports and reexports* under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BIS.

(2) **Eligible commodities and software.** The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use by the exporter or employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible tools of trade may include, but are not limited to, such equipment and software as is necessary to commission or

service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The tools of trade must remain under the effective control of the exporter or the exporter's employee (see part 772 of the EAR for a definition of "effective control"). All tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2 (see Supplement No.1 to part 740) or Sudan. For exports under this License Exception of laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, refer to item interpretation 13 in §770.2 of the EAR.

(ii) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

(B) The kits remain under effective control of the exporter or an employee of the exporter; and

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts returned (see "parts", §740.10(a) of this part).

(iii) *Exhibition and demonstration.* You may export or reexport under this provision commodities and software for exhibition or demonstration in all countries except countries listed in Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while

they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains "effective control" over the commodities and software while they are abroad (see part 772 of the EAR for a definition of "effective control"). The commodities and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(iv) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad may be exported or reexported to all destinations under this section, except Country Group E:2, Sudan or Syria.

(v) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this License Exception does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) *Broadcast material.*

(A) Video tape containing program material recorded in the country of export to be publicly

broadcast in another country.

(B) Blank video tape (raw stock) for use in recording program material abroad.

(vii) *Assembly in Mexico*. Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) *News media*.

(A) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany "accredited" news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2, or Sudan (see Supplement No. 1 to part 740) if the commodities:

(1) Are retained under "effective control" of the exporting news gathering firm;

(2) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), *news media*, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(3) Are removed with the news media personnel at the end of the trip.

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to:

U.S. Department of Commerce

Bureau of Industry and Security

●Office of Export Enforcement, Room H4616
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that the *temporary exports and reexports* provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), *tools of trade*, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), *tools of trade* and (a)(2)(viii), *news media*, of this section do not preclude independent "accredited" contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B*.

(A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (see Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without prior authorization by BIS.

(B) For purposes of this paragraph (a)(2)(ix),

U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States).

(3) Special restrictions.

(i) *Destinations.*

(A) No commodity or software may be exported or reexported under paragraph (a) of this section to Country Group E:2 (see Supplement No. 1 to this part) except as permitted by paragraph (a)(2)(viii) of this section (news media). These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under the ownership, control, lease, or charter by any country in Country Group E:2, or any national thereof;

(B) No commodity or software may be exported under this License Exception to Country Group D:1 (see Supplement No. 1 to part 740) except:

(1) Commodities and software exported under paragraph (a)(2)(viii), *news media*, of this section;

(2) Commodities and software exported under paragraph (a)(2)(i), *tools of trade*, of this section; and

(3) Commodities exported as *kits of replacement parts*, consistent with the requirements of paragraph (a)(2)(ii) of this section.

(C) These destination restrictions apply to

temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) *Ineligible commodities or software.* Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly, in any sensitive nuclear activity as described in §744.2 of the EAR may *not* be exported or reexported to any destination under the *temporary exports and reexports* provisions of this License Exception.

(iii) *Use or disposition.* No commodity or software may be exported or reexported under this Paragraph (a) if:

(A) An order to acquire the commodity or software has been received before shipment;

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms of this License Exception; or

(C) The commodity or software is for lease or rental abroad.

(4) Return or disposal of commodities and software. All commodities and software exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license

application to BIS at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BIS will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BIS-748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BIS approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BIS normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) Reexports. Commodities and software legally exported from the United States may be

reexported to a new country(ies) of destination under this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

(b) Exports of items temporarily in the United States

Scope. The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

Note 1 to paragraph (b) of this section: A commodity withdrawn from a bonded warehouse in the United States under a "withdrawal for export" customs entry is considered as "moving in transit". It is not considered as "moving in transit" if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

Note 2 to paragraph (b) of this section: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.

(1) Items moving in transit through the United States. Subject to the following conditions, the provisions of paragraph (b)(1) authorize export of items moving in transit through the United States under a Transportation and Exportation (T.& E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security,

nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 or Sudan under this section.

(iii) The following may *not* be exported in transit from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS-645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of this paragraph (b)(1) apply to *all* shipments from Canada moving in transit through the United States to *any* foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B-13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than \$50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or applicable other U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B-13, as on Commerce Form 7513,¹ or when Form 7513 is not required, must

¹ The complete names of these forms are: Commerce Form 7513, "Shipper's Export Declaration for Intransit Goods"; Customs Form 7512, "Transportation Entry and Manifest of Goods Subject to Customs Inspection

be the same as on Customs Form 7512. When there is a material difference, a corrected Form B-13 authorizing the shipment is required.

(2) Items imported for display at U.S. exhibitions or trade fairs. Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an exhibition or trade fair *and* were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:2 or Sudan (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, missile technology, chemical and biological weapons reasons, or nuclear proliferation, respectively.

(3) Return of unwanted shipments. A foreign-origin item may be returned under this License Exception to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba or Libya.

and Permit".

(4) Return of shipments refused entry. Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

- (i) A destination in Cuba or Libya; or
- (ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) Exports of beta test software

(1) Scope. The provisions of this paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) Eligible countries. Encryption software controlled under ECCN 5D002 is not eligible for export or reexport to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria under the provisions of this paragraph (c). All other beta test software is eligible for export or reexport to all destinations, except Cuba, Iran, Iraq, Libya, and Sudan under the provisions of this paragraph (c).

(3) Eligible software. All software that is controlled by the Commerce Control List (Supplement No.1 to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph (c). Encryption software controlled for “EI” reasons under ECCN 5D002 is eligible for export and reexport under this paragraph (c), provided that the exporter has submitted the information described in paragraph (c)(8) of this section by the time of export. Final encryption products produced by the testing consignee are subject to any applicable provisions in §742.15(b)(2) of the EAR (for mass market encryption commodities and software with

symmetric key length exceeding 64-bits) or §740.17 of the EAR (License Exception ENC), including review and reporting requirements.

(4) Conditions for use. Exports or reexports of beta test software programs under the provisions of this paragraph (c) must meet all of the following conditions:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note (see Supplement No. 2 to part 774 of the EAR) or the Cryptography Note in Category 5, Part 2 (“Information Security”), of the Commerce Control List (see Supplement No.1 to part 774 of the EAR);

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) Importer Statement. Prior to exporting or reexporting any eligible software under this paragraph (c), the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

"We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software."

(6) Use limitations. Only testing consignees that provide the importer statement required by

paragraph (c)(5) of this section may execute any software that was exported or reexported to them under the provisions of this paragraph (c).

(7) Return or disposal of software. All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

(8) Notification and reporting of beta test encryption software.

(i) Notification. For beta test software eligible under this license exception, you must submit to BIS, by the time of export, the information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR. Submit your notification by e-mail to BIS at crypt@bis.doc.gov, and provide a copy of the notification to the ENC Encryption Request Coordinator at enc@ncsc.mil.

(ii) Reporting. For beta test encryption software eligible under this license exception, the exporter must submit the names and addresses of the testing consignees (except names and addresses of individual consumers) and the name and version of the beta software consistent with §740.17(e)(5) of the EAR.

§740.10

SERVICING AND REPLACEMENT OF PARTS AND EQUIPMENT (RPL)

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.

(a) Parts

(1) Scope. The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) One-for-one replacement of parts.

(i) The term "replacement parts" as used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term "subassembly" means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult §740.9(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction.

(iii) The parts to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacement parts, or to a foreign firm that is under the effective control of

that person.

(3) Exclusions.

(i) No replacement parts may be exported to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(ii) No parts may be exported to be held abroad as spare parts or equipment for future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No parts may be exported to any destination, except the countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)), if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in §744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in §744.2(a) of the EAR.

(iv) No replacement parts may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an "aircraft" (as defined in part 772 of the EAR) or national security controlled commodity.

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment controlled under ECCN 2A983 or related software

controlled under ECCN 2D983.

(vi) The conditions described in this paragraph (a)(3) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in §734.4 of the EAR.

(4) Reexports. Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(b) Servicing and Replacement

(1) Scope. The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition.* "Servicing" as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the PRC and North Korea.* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC) and North Korea) (see Supplement No. 1 to part 740) that are sent to the United States or a foreign party for servicing may be returned under this License Exception to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end-use and the end-user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) *Terrorist supporting countries.* No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

(3) Replacements for defective or unacceptable U.S.-origin equipment.

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or

authorization granted by BIS.

(B) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(C) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport under a license issued by BIS.

(D) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part) or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* (See Supplement No. 1 to part 740.) In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1:

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used.

***(c) Special Recordkeeping Requirements:
ECCNs 2A983 and 2D983.***

(1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The following information must be specially maintained for each such export or reexport transaction:

(i) A description of the equipment replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of equipment replaced;

(iv) Location of the equipment replaced, repaired or serviced;

(v) The name and address of who received the items for replacement, repair or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in §762.7 of the EAR.

§740.11

**GOVERNMENTS, INTERNATIONAL
ORGANIZATIONS, AND
INTERNATIONAL INSPECTIONS UNDER
THE CHEMICAL WEAPONS
CONVENTION (GOV)**

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; and international inspections under the Chemical Weapons Convention.

(a) International Safeguards

(1) **Scope.** You may export and reexport commodities or software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom), and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in

Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(iii) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in §744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in the EAR.

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 µPa at 1 m) for equipment with an operating

frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.1.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) "Composite" structures or laminates controlled by 1A002.a, having an organic "matrix" and made from materials listed under 1C010.c or 1C010.d; and

(ii) "Digital" computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(iii) "Electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 190,000 MTOPS; and

NOTE to paragraph 740.11(a)(2)(iii): Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by "electronic assemblies", which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of "computing elements" so that the CTP of the aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially

designed for the “development” or “production” of “digital computers” controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the “development” or “production” of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the “development” or “production” of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed or modified for the “development” of “technology” controlled by 9E003.a.1 or 9E003.a.3.a.

(3) No encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may be exported under the provisions of this paragraph (a).

(b) Governments

(1) Scope. The provisions of paragraph (b) authorize exports and reexports of the items listed in paragraph (b)(2) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(2) Eligibility.

(i) *Items for personal use by personnel and agencies of the U.S. Government.* This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to

public international organizations), and their immediate families and servants. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Items for official use by personnel and agencies of the U.S. Government.* This provision is available for items consigned to and for the official use of any agency of the U.S. Government.

(iii)(A) *Items for official use within national territory by agencies of cooperating governments.* This License Exception is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except items described in paragraph (a) to Supplement No. 1 of this section:

(B) *Reporting requirements.* See §743.1 of the EAR for reporting requirements for exports of certain items under this paragraph (b)(2)(iii).

(iv) (A) *Diplomatic and consular missions of a cooperating government.* This License Exception is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except items described in paragraph (b) of Supplement No. 1 of this section.

(B) *Reporting requirements.* See §743.1 of the EAR for reporting requirements for exports of certain items under this paragraph (b)(2)(iv).

(3) Definitions.

(i) “Agency of the U.S. Government” includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American

States. Therefore, shipments may not be made to these non-government national or international agencies, except as provided in (b)(2)(i) of this section for U.S. representatives to these organizations.

(ii) "Agency of a cooperating government" includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland and Taiwan.

(c) International inspections under the Chemical Weapons Convention (CWC or Convention)

(1) The provisions of this paragraph (c) authorize exports and reexports to the Organization for the Prohibition of Chemical Weapons (OPCW) and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention. The OPCW is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from peaceful purposes to non-peaceful purposes. These provisions authorize exports and reexports for official OPCW use of the following:

(i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain effective control of such commodities, software and technology.

(ii) Controlled technology relating to the

training of the OPCW inspectorate.

(iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:

(A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;

(B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and

(C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.

(2) Exclusions. The following items may not be exported or reexported under the provisions of this paragraph (c):

(i) Computers with a Composite Theoretical Performance (CTP) greater than 190,000 MTOPS. In addition, computers eligible for this provision of License Exception GOV may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria. No MTOPS limit applies to exports or reexports to countries in Tier 1 (see §740.7(b)(1) of the EAR).

(ii) Inspection samples collected in the U.S. pursuant to the Convention; and

(iii) Commodities and software that are no longer in OPCW official use. Such items must be disposed of in accordance with the EAR.

(3) Confidentiality. The application of the provisions of this paragraph (c) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and retransfer of U.S. goods and services.

§740.12

GIFT PARCELS AND HUMANITARIAN DONATIONS (GFT)**(a) Gift parcels**

(1) Scope. The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of "gift parcel."²

Note to paragraph (a) of this section: A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in §734.2(b) of the EAR, must be licensed by BIS. (See §748.9(e) of the EAR for licensing of multiple gift parcels).

(2) Commodity, value and other limitations.

(i) *Eligible commodities.* The eligible commodities are as follows:

² Many foreign countries permit the entry, duty-free, of gift parcels that conform to regulations regarding contents and marking. To secure this advantage, the sender should show the words "U.S.A. Gift Parcel" on the addressee side of the package and on any required customs declarations. Information regarding the foreign postal regulations is available at local post offices. Senders of gift parcels who wish information regarding import duties of a foreign country should contact the nearest Commercial Office, Consulate or Embassy of the country concerned.

(A) The commodity must not be controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP) (see Commerce Control List, part 774 of the EAR); and

(B) The commodity must be of a type and in quantities normally given as gifts between individuals.

(1) For Cuba, the only commodities that may be included in a gift parcel are the following items: food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and in addition receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment.

(2) For all other destinations, eligible commodities include all items described in paragraph (a)(2)(i)(B)(1) of this section as well as all other items normally sent as gifts. Gold bullion, gold tael, and gold bars are prohibited as are items intended for resale or reexport.

Example to paragraph (a) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(3) For purposes of paragraph (a)(2)(ii)(B) of this section, clothing is appropriate, except that export of military wearing apparel to Country Group D:1 or E:2 under this License Exception is specifically prohibited, regardless of whether all

distinctive U.S. military insignia, buttons, and other markings are removed.

(ii) *Import requirements.* The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) *Frequency.* Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month. Parties seeking authorization to exceed this limit due to compelling humanitarian concerns (e.g., gifts of medicine to relatives) should submit a license application (BIS-748P) with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities included in a gift parcel may not exceed \$400, except for gift parcels to Cuba where the value of non-food items may not exceed \$200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(3) How to export gift parcels. (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation "GIFT — Export License Not Required" written on the addressee side of the package and the symbol "GFT" written on any required customs declaration.

(b) Humanitarian donations

(1) Scope. The provisions of paragraph (b) authorize exports or reexports by groups or organizations of donations to meet basic human needs when those groups or organizations have

experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) Basic human needs. Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) Eligible donors. Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) Donations. To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this section.

(5) Ineligible commodities and software. The following commodities and software are not eligible:

(i) Commodities and software controlled for

national security, chemical or biological weapons, and nuclear non-proliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

• (iii) Exports to Cuba of medical items excluded by §746.2(b)(1) of the EAR.

(6) Eligible items. Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) Additional recordkeeping requirements. In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

§740.13

TECHNOLOGY AND SOFTWARE — UNRESTRICTED (TSU)

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); “mass market” software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under §734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

(a) Operation technology and software

• **(1) Scope.** The provisions of paragraph (a) permit exports and reexports of operation technology and software. “Operation technology” is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those commodities or software that are lawfully exported or reexported under a license, a License Exception, or NLR. The “minimum necessary” operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the commodities or software. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) Provisions and Destinations.

(i) *Provisions.* Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or

reexported.

(b) Sales technology

(1) Scope. The provisions of paragraph (b) authorize exports and reexports of sales technology. "Sales technology" is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) Provisions and destinations.

(i) *Provisions.* Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) *Destinations.* Sales technology may be exported or reexported to any destination.

NOTE: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Industry and Security.

(c) Software updates

The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors ("fixes" to "bugs") in software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) General Software Note: "mass market" software

(1) Scope. The provisions of paragraph (d) authorize exports and reexports of "mass market" software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).¹

(2) Exclusions. The provisions of this paragraph (d) are not available for encryption software controlled for "EI" reasons under ECCN 5D002 or for encryption software with symmetric key length exceeding 64-bits that qualifies as mass market encryption software under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). (Once such mass market encryption software has been reviewed by BIS and released from "EI" and "NS" controls pursuant to §742.15(b)(2) of the EAR, it is controlled under ECCN 5D992 and is thus outside the scope of License Exception TSU.) See §742.15(b)(2) of the EAR for exports and reexports of mass market encryption products controlled under ECCN 5D992.

¹"Mass market" software may fall under the classification of "general use" software for export clearance purposes. Exporters should consult the Census Bureau FTSR for possible SED or AES requirements.

(3) Provisions and destinations.

(i) *Destinations.* "Mass market" software is available to all destinations except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(ii) *Provisions.* "Mass market" treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

- (1) Over the counter transactions;
- (2) Mail order transactions; or
- (3) Telephone call transactions; *and*

(B) Designed for installation by the user without further substantial support by the supplier.

(e) Encryption source code (and corresponding object code).

(1) Scope. The provisions of paragraph (e) of this section authorize exports and reexports, without review, of encryption source code controlled under ECCN 5D002 that would be considered publicly available under §734.3(b)(3) of the EAR, and corresponding object code resulting from the compiling of such source code.

(2) Eligible software. Encryption source code is eligible for export and reexport under License Exception TSU, provided that it would be considered publicly available under §734.3(b)(3) of the EAR. Such encryption source code is eligible for License Exception TSU even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code. Corresponding object code resulting from the compiling of such source code is also eligible for License Exception TSU

treatment if such object code would also be considered publicly available under §734.3(b)(3) of the EAR.

(3) Restrictions. Encryption software controlled under ECCN 5D002 that would not be considered publicly available, but which incorporates or is specially designed to use encryption software that would be considered publicly available, is not eligible for export or reexport under this paragraph (e).

(4) Country restrictions. You may not knowingly export or reexport source code, corresponding object code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(5) Notification requirement. You must provide BIS with written notification of the Internet location (e.g., URL or Internet address) of the source code or a copy of the source code by the time of export. Submit the notification by e-mail to BIS at crypt@bis.doc.gov, and provide a copy of the notification to the ENC Encryption Request Coordinator at enc@ncsc.mil.

(6) "Knowledge" of a prohibited export or reexport. Posting of source code or corresponding object code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone would not establish "knowledge" of a prohibited export or reexport. See §740.13(e)(4) of the EAR for prohibited knowing exports to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. In addition, such posting would not trigger "red flags" necessitating the affirmative duty to inquire under the "Know Your Customer" guidance provided in Supplement No. 3 to part 732 of the EAR.

***(f) Special Recordkeeping Requirements:
ECCNs 2D983 and 2E983.***

In addition to any other recordkeeping requirements set forth elsewhere in the EAR,

exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983 and 2E983, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in §762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983 and 2E983:

- (1) A description of the software or technology exported or reexported, including the ECCN, as identified on the CCL;
- (2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the CCL;
- (3) The intended end-use of the software or technology;
- (4) The name and address of the end-user;
- (5) The quantity of software shipped; and
- (6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

§740.14

BAGGAGE (BAG)

(a) Scope

This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities and software described in this section.

(b) Eligibility

Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate families traveling with them to any destination or series of destinations. Individuals leaving the United States temporarily (i.e., traveling) must bring back items exported and reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

(1) Personal effects. Usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) Household effects. Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

(3) Vehicles. Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) Tools of trade. Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household being moved. For special provisions regarding encryption commodities and software subject to EI controls, see paragraph (f) of this section.

(c) Limits on eligibility

The export of any commodity or software is limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In

addition, the commodities or software must be:

- (1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;
- (2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families traveling with them, or by the crew members of exporting carriers;
- (3) Not intended for sale or other disposal; and
- (4) Not exported under a bill of lading as cargo if exported by crew members.

(d) Special provision: unaccompanied baggage

Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked "BAGGAGE." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), encryption items (EI) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS, EI or NP may not be exported under this License Exception as unaccompanied baggage to Country Groups D:1, D:2, D:3, D:4, or E:1. (See Supplement No. 1 of this part).

(e) Special provisions: shotguns and shotgun shells

- (1) A United States citizen or a permanent resident alien leaving the United States may export or reexport shotguns with a barrel length of 18 inches or over and shotgun shells under this License Exception, subject to the following limitations:
 - (i) Not more than three shotguns may be taken on any one trip.
 - (ii) The shotguns and shotgun shells must be with the person's baggage but they may not be mailed.

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. Accordingly, except as provided in (e)(2) of this section, shotguns may not be exported permanently under this License Exception. All shotguns and unused shotgun shells must be returned to the United States. Note that since certain countries may require an Import Certificate or a U.S. export license before allowing the import of a shotgun, you should determine the import requirements of your country of destination in advance.

- (2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of Department of Treasury Regulations (27 CFR 178.115(d)).

(f) Special provisions: encryption commodities and software subject to EI controls on the Commerce Control List.

- (1) A U.S. citizen or permanent resident alien of

the United States as defined by 8 U.S.C. 1101(a)(20) may use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(2) A person other than a U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) (except a national of a country listed in Country Group E:1 of Supplement No. 1 of this part who is not a U.S. citizen or permanent resident alien of the United States) may also use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

§740.15

AIRCRAFT AND VESSELS (AVS)

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents. Generally, no License Exception symbol is necessary for export clearance purposes; however, when necessary, the symbol "AVS" may be used.

(a) Aircraft on temporary sojourn

(1) Foreign registered aircraft. An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the aircraft to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part) has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part); and

(iii) It does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government.

(2) U.S. registered aircraft. (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to 14 CFR part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination, provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad; and

(D) The aircraft does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to a destination in Country Group E:1 (see Supplement No. 1 to this part) (flights to these destinations require a license), provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of

operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad;

(D) The aircraft does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government; and

(E) The aircraft will be operated while abroad by a U.S. licensed pilot, except that during domestic flights within a foreign country, the aircraft may be operated by a pilot currently licensed by that foreign country.

(3) Criteria. The following nine criteria each must be met if the flight is to qualify as a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. An export is for the transfer of operational control unless the exporter retains each of the following indicia of control:

(i) *Hiring of cockpit crew.* Right to hire and fire the cockpit crew.

(ii) *Dispatch of aircraft.* Right to dispatch the aircraft.

(iii) *Selection of routes.* Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside a destination in Country Group E:1 (see Supplement No. 1 to this part), under the control of a party who is not a national of any of these

countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) *Location of spares.* Spares are not located in a destination in Country Group E:1 (see Supplement No. 1 to this part).

(vi) *Place of registration.* The place of registration is not changed to a destination in Country Group E:1 (see Supplement No. 1 to this part).

(vii) *No transfer of technology.* No technology is transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.

(viii) *Color and logos.* The aircraft does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (see Supplement No. 1 to this part).

(ix) *Flight number.* The aircraft does not fly under a flight number issued to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part) as such a number appears in the Official Airline Guide.

(4) Reexports. Civil aircraft legally exported from the United States may be reexported under this section, provided the restrictions described in this paragraph (a) are met.

(b) Equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores

(1) Vessel. Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported or reexported for use on board a vessel of any registry, except a vessel registered in Country Group D:1 (see Supplement No. 1 to part 740),

Cuba, or owned or controlled by, or under charter or lease to any of these countries or their nationals. In addition, other equipment and services for necessary repair to fishing and fishery support vessels of Country Group D:1 may be exported for use on board such vessels when admitted into the United States under governing international fishery agreements.

(2) Aircraft. Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported or reexported for use on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, Cuba, or Libya, or a national of any of these countries.

(3) Ship and plane stores. Usual and reasonable kinds and quantities of the following commodities may be exported for use or consumption on board an aircraft or vessel of any registry during the outgoing and immediate return flight or voyage. (Note that fuel and related commodities that qualify as ship or plane stores as described in this License Exception must be exported under the short supply License Exception SPR (see §754.2(h) of the EAR.)

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies.

(c) Shipments to U.S. or Canadian vessels, planes and airline installations or agents

(1) Exports to vessels or planes of U.S. or Canadian registry. Export may be made of the

commodities set forth in paragraph (c)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Cuba or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are all of the following:⁶

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record has been filed in accordance with the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use.

(2) Exports to U.S. or Canadian airline's installation or agent. Exports of the commodities set forth in paragraph (c)(3) of this section, except fuel, may be made to a U.S. or Canadian airline's⁷ installation or agent in any foreign destination except Cuba or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

⁶ Where a validated license is required, see §§ 748.2 and 748.4(g) of the EAR.

⁷ See Part 772 of the EAR for definitions of United States and Canadian airlines.

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Cuba or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record has been filed in accordance with the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) Applicable commodities. This paragraph (c) applies to the following commodities, subject to the provisions in paragraph (c)(1) and (c)(2) of this section:

Note to paragraph (c)(3) of this section: Fuel and related commodities for shipment to vessels or planes of U.S. or Canadian registry as described in this License Exception must be shipped under the short supply License Exception SPR (see §754.2(h) of the EAR);

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies; and

(vi) Equipment and spare parts.

§740.16

ADDITIONAL PERMISSIVE REEXPORTS (APR)

This License Exception allows the following reexports:

(a) Reexports from Country Group A:1 and cooperating countries

Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B *that is not also included in Country Group D:2, D:3, or D:4*; Cambodia; or Laos; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than Cambodia, Laos, or North Korea and the commodity being reexported is controlled for national security reasons.

(b) Reexports to and among Country Group A:1 and cooperating countries

Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating

country, or for reexport from such country in accordance with other provisions of the EAR. All commodities are eligible except those controlled for nuclear nonproliferation reasons or missile technology reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in §734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as

controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

§740.17

ENCRYPTION COMMODITIES AND SOFTWARE (ENC)

License Exception ENC authorizes the export and reexport of encryption items controlled under ECCN 5A002, 5D002 or 5E002, and “information security” test, inspection, and production equipment controlled under ECCN 5B002. Encryption items exported and reexported under License Exception ENC remain subject to “EI” controls. No encryption items may be exported or reexported, under this license exception, to countries listed in Country Group E:1 of Supplement No. 1 to this Part – this includes exports and reexports (as defined in §734.2 of the EAR) of encryption source code and technology

to nationals of these countries. Review and reporting requirements apply to certain exports under this license exception (paragraph (d) of this section describes how to submit encryption items for review; paragraph (e) of this section describes which exports are subject to reporting requirements). Certain exports and reexports to government end-users are authorized under paragraphs (a) and (b)(3) of this section. Section 772.1 of the EAR defines the term “government end-user” as it applies to encryption items. Section 742.15 of the EAR describes the license requirements and policies that apply to exports and reexports of encryption items.

(a) Exports and reexports to countries listed in Supplement No. 3 to this part

Encryption items controlled under ECCN 5A002, 5D002 or 5E002 (except cryptanalytic items as defined in part 772 of the EAR), and “information security” test, inspection, and production equipment controlled under ECCN 5B002, are authorized for immediate export and reexport to government and non-government end-users located in the countries listed in Supplement No. 3 to this part 740, subject to the review requirements described in paragraph (d) of this section. Cryptanalytic items are authorized to non-government end-users, only, under this paragraph (a). Encryption items and “information security” test, inspection, and production equipment may also be exported or reexported to any destination eligible under this license exception for the internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supplement No. 3 to this part 740. (Note that License Exception ENC prohibits exports and reexports of encryption source code and technology to nationals of countries listed in Country Group E:1 of Supplement No. 1 to this part.) Before you export an item for the first time under this license exception, you must submit to BIS and the ENC Encryption Request Coordinator a review request for that item, as described in paragraph (d) of this section. See paragraph (e) of

this section for applicable semi-annual reporting requirements.

(b) Exports and reexports to all other eligible countries

(1) Encryption items for U.S. subsidiaries.

Exports and reexports of encryption items controlled under ECCN 5A002, 5D002 or 5E002 and “information security” test, inspection, and production equipment controlled under ECCN 5B002, are authorized under this license exception, without review, to foreign subsidiaries of U.S. companies for any end-use not prohibited elsewhere in the EAR. This paragraph (b)(1) also authorizes exports and reexports by U.S. companies and their subsidiaries of any such items (including encryption source code and technology), to foreign nationals working as contractors, interns or employees of said U.S. companies and their subsidiaries, provided that the items are for internal company use, including the development of new products. (Note that License Exception ENC prohibits exports and reexports of encryption source code and technology to nationals of countries listed in Country Group E:1 of Supplement No. 1 to this Part.) All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph (b)(1) are subject to the EAR and require review and authorization before any sale or retransfer outside of the U.S. company.

(2) Encryption commodities and software to non-government end-users.

Thirty days after registration of a completed review request by BIS (“registration” is defined in §750.4(a)(2) of the EAR), encryption commodities, software and components controlled under ECCN 5A002 or 5D002 (except such items which provide an open cryptographic interface, as defined in part 772 of the EAR), and “information security” test, inspection, or production equipment controlled under ECCN 5B002, are authorized for export or reexport to any individual, commercial firm or other non-government end-user located outside

the countries listed in Supplement No. 3 to this part 740. The thirty days may not include any time that your review request was on hold without action. To request authorization under the provisions of this paragraph (b)(2), you must submit to BIS and the ENC Encryption Request Coordinator a review request as described in paragraph (d) of this section. See paragraph (e) of this section for applicable semi-annual reporting requirements. Encryption commodities and software eligible for export or reexport under this paragraph (b)(2) include, but are not limited to, the following:

(i) Network infrastructure products, such as high end routers or switches designed for large communications, and specially designed software, parts, and components thereof (including commodities and software which activate or enable cryptographic functionality in network infrastructure products that would otherwise remain disabled);

(ii) Encryption source code that would not be considered publicly available for export or reexport under License Exception TSU. (You may immediately export and reexport such encryption source code under License Exception ENC, provided that you have submitted a review request, including a copy of your source code, to BIS and the ENC Encryption Request Coordinator. Note that License Exception ENC prohibits exports and reexports of encryption source code to countries listed in Country Group E:1 of Supplement No. 1 to this part, or to nationals of these countries.);

(iii) General purpose toolkits;

(iv) Cryptanalytic items (as defined in part 772 of the EAR);

(v) Commodities, software and components not otherwise authorized for export as mass market or retail.

(3) Retail encryption commodities, software

and components to government and non-government end-users. Thirty days after registration of a completed review request by BIS ("registration" is defined in §750.4(a)(2) of the EAR), retail encryption commodities, software and components controlled under ECCN 5A002 or 5D002 are authorized for export and reexport to any individual, commercial firm or other non-government end-user located outside the countries listed in Supplement No. 3 to this part 740. The thirty days may not include any time that your review request was on hold without action. Once BIS has completed its review and authorizes your encryption commodities, software, and components for export or reexport as retail encryption items under License Exception ENC, you may also export or reexport these items to government end-users. To request authorization under the provisions of this paragraph (b)(3), you must submit to BIS and the ENC Encryption Request Coordinator a review request as described in paragraph (d) of this section. See paragraph (e) of this section for applicable semi-annual reporting requirements.

(i) *Retail eligibility criteria.* Retail encryption commodities and software are products and components:

(A) Generally available to the public by means of any of the following:

(1) Are sold in tangible form through retail outlets independent of the manufacturer;

(2) Are specially designed for individual consumer use; or

(3) Are sold or will be sold in large volume, without restriction, through mail order transactions, electronic transactions, or telephone call transactions; and

(B) Meeting all of the following:

(1) The cryptographic functionality cannot be easily changed by the user;

(2) Substantial support is not required for installation and use; and

(3) The cryptographic functionality has not been modified or customized to customer specification.

(ii) *Additional types of retail encryption products.* The following products will also be considered to be retail encryption products:

(A) Encryption commodities and software (including key management products) with key lengths not exceeding 64 bits for symmetric algorithms, 1024 bits for asymmetric key exchange algorithms, and 160 bits for elliptic curve algorithms. (You may immediately export or reexport such encryption commodities and software as retail items upon submitting a completed review request to BIS and the ENC Encryption Request Coordinator, in accordance with the requirements described in paragraph (d) of this section);

(B) Encryption products and network-based applications that provide equivalent functionality to other mass market or retail encryption commodities and software (refer to the Cryptography Note (Note 3) to part II of Category 5 of the CCL for the definition of mass market encryption commodities and software);

(C) Encryption products that are limited to allowing foreign-developed cryptographic products to operate with U.S. products (e.g., signing). No review of the foreign-developed cryptography is required;

(D) Encryption commodities and software that activate or enable cryptographic functionality in retail encryption products which would otherwise remain disabled.

(iii) *Examples of eligible retail encryption products.* Subject to the retail eligibility criteria in paragraph (b)(3)(i) of this section, retail encryption items include, but are not limited to,

the following:

(A) General purpose operating systems that do not qualify as mass market;

(B) Non-programmable encryption chips, and chips that are constrained by design for retail products;

(C) Retail networking products, such as low-end routers, firewalls, and virtual private networking (VPN) equipment designed for small office or home use;

(D) Desktop applications (e.g., e-mail, browsers, games, word processing, database, financial applications or utilities) that do not qualify as mass market;

(E) Programmable database management systems and associated application servers;

(F) Low-end servers and application-specific servers (including client-server applications, e.g., Secure Socket Layer (SSL)-based web applications and applets, servers, and portals);

(G) Network and security management products designed for, bundled with, or pre-loaded on single CPU computers, low-end servers or retail networking products; and

(H) Short-range wireless components and software that do not qualify as mass market. Commodities and software that would not otherwise be controlled under Category 5 (telecommunications and “information security”) of the Commerce Control List, but which are controlled under ECCN 5A002 or 5D002 only because they incorporate components or software that provide short-range wireless encryption functions (e.g., with an operating range typically not exceeding 100 meters), may be exported or reexported under the retail provisions of License Exception ENC, without review or reporting.

(4) Reviews for *de minimis* eligibility. Items controlled for “EI” reasons under ECCN 5A002, 5D002, or 5E002 are not eligible for *de minimis* treatment under §734.4 of the EAR. However, exporters may, as part of a review request, ask that U.S.-origin retail encryption software controlled under ECCN 5D002 and U.S.-origin parts and components controlled under ECCN 5A002, that are incorporated in foreign-made items, be made eligible for *de minimis* treatment. The review of *de minimis* eligibility for such items will take U.S. national security interests into account.

(c) Reexports and transfers

U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b) of this section to government end-users, or for government end-uses, within the same country are prohibited, unless otherwise authorized by license or license exception. Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits remain subject to the EAR, but do not require review (for encryption reasons) by BIS. These products can be exported or reexported under License Exception ENC without notification and without further authorization (for encryption reasons) from BIS. Such products include foreign-developed products that are designed to operate with U.S. products through a cryptographic interface.

(d) Review requirement

(1) Review request procedures. To request review of your encryption products under License Exception ENC, you must submit to BIS and to the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR

(Guidelines for Submitting Review Requests for Encryption Items). Review requests must be submitted on Form BIS-748P (Multipurpose Application), or its electronic equivalent, as described in §748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase “License Exception ENC” in Block 9 (Special Purpose) of the application form and place an “X” in the box marked “Classification Request” in Block 5 (Type of Application) – Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Review requests that are not submitted electronically to BIS should be mailed to the address indicated in §748.2(c) of the EAR. See paragraph (e)(5)(ii) of this section for the mailing address for the ENC Encryption Request Coordinator. BIS will notify you if there are any questions concerning your request for review under License Exception ENC (e.g., because of missing or incomplete support documentation). Once your review has been completed, BIS will notify you in writing concerning the eligibility of your products for export or reexport, under the provisions of this license exception. BIS reserves the right to suspend your eligibility to export and reexport under License Exception ENC and to return your review request without action, if you have not met the review requirements. You may not export or reexport retail encryption commodities, software and components under this license exception to government end-users headquartered outside of Canada and the countries listed in Supplement No. 3 to this part 740, unless you have received prior authorization from BIS.

(2) Grandfathering. Encryption commodities, software, parts or components (except cryptanalytic items) previously approved for export may be exported or reexported without further review to government or non-government end-users in countries listed in Supplement No. 3 to this part 740, and to any non-government end-user outside the countries listed in Supplement No. 3 to this part 740 (except items which provide

an open cryptographic interface as defined in part 772 of the EAR). This includes products approved under a license, an Encryption Licensing Arrangement, or classified as eligible to use License Exception ENC (except for those products that were authorized only for export to U.S. subsidiaries) prior to October 19, 2000. Encryption technology previously approved for export under a license or an Encryption Licensing Arrangement may be exported or reexported to government and non-government end-users in countries listed in Supplement No. 3 to this part 740.

(3) Key length increases. Exporters may increase the key lengths of products previously classified and continue to export these products under the applicable provisions of License Exception ENC, without further review, upon certification to BIS and the ENC Encryption Request Coordinator in accordance with paragraph (d)(3)(ii) of this section. No other change in cryptographic functionality is allowed under License Exception ENC.

(i) Any product previously classified as ECCN 5A002 or 5D002 (except encryption items that provide an open cryptographic interface, as defined in §772.1 of the EAR) may, with any upgrade to the key length used for confidentiality or key exchange algorithms, be exported or reexported under License Exception ENC to any non-government end-user without an additional review. A license is required to export or reexport items that provide an open cryptographic interface to end-users located outside the countries listed in Supplement No. 3 to this part 740. In addition, products previously reviewed by BIS that were determined to be eligible as “retail” under this license exception may be exported or reexported to government end-users, without additional review. For products not previously determined to be eligible as retail products, another review is required to determine their eligibility as “retail” products under paragraph (b)(3) of this section.

(ii) Exporters must certify to BIS, in a letter

from a corporate official, that the only change in the encryption product is the key length for confidentiality or key exchange algorithms and that there is no other change in cryptographic functionality. Certifications must include the original authorization number issued by BIS and the date of issuance. BIS must receive this certification prior to any export of an upgraded encryption product. The certification should be sent to BIS and a copy of the certification should be sent to the ENC Encryption Request Coordinator at the mailing address indicated in paragraph (e)(5) of this section.

(e) Reporting requirements

(1) Semi-annual reporting requirement. Semi-annual reporting is required for exports and reexports under this license exception. Certain encryption items and transactions are excluded from this reporting requirement (see paragraph (e)(4) of this section). For instructions on how to submit your reports, see paragraph (e)(5) of this section.

(2) General information required. Exporters must include all of the following applicable information in their reports:

(i) For items exported to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported and, if collected by the exporter as part of the distribution process, the end-user’s name and address;

(ii) For items exported through direct sale, the name and address of the recipient, the item, and the quantity exported (except for retail products, if the end-user is an individual consumer);

(iii) For exports of ECCN 5E002 items to be used for technical assistance that are not released by §744.9 of the EAR, the name and address of the end-user; and

(iv) The authorization number and the name of the item(s) exported.

(3) Information on foreign manufacturers and products that use encryption items. For direct sales or transfers, under License Exception ENC, of encryption components, source code, general purpose toolkits, equipment controlled under ECCN 5B002, technology, or items that provide an open cryptographic interface to foreign developers or manufacturers when intended for use in foreign products developed for commercial sale, you must submit the names and addresses of the manufacturers using these encryption items and, if you know when the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which these encryption items are being used (e.g., brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(4) Exclusions from reporting requirements. Reporting is not required for the following items and transactions:

(i) Any encryption item to U.S. subsidiaries for internal company use;

(ii) Encryption commodities or software with a symmetric key length not exceeding 64 bits;

(iii) Retail products exported to individual consumers;

(iv) Encryption items exported via free or anonymous download;

(v) Encryption items from or to a U.S. bank, financial institution or their subsidiaries, affiliates, customers or contractors for banking or financial operations;

(vi) Items that incorporate components limited

to providing short-range wireless encryption functions;

(vii) Retail operating systems, or desktop applications (e.g., e-mail, browsers, games, word processing, data base, financial applications or utilities) designed for, bundled with, or pre-loaded on single CPU computers, laptops or hand-held devices;

(viii) Client Internet appliance and client wireless LAN cards;

(ix) Foreign products developed by bundling or compiling of source code.

(5) Submission requirements. You must submit the reports required under this section, semi-annually, to BIS, unless otherwise provided in this paragraph (e)(5). For exports occurring between January 1 and June 30, a report is due no later than August 1 of that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. These reports must be provided in electronic form to BIS. Recommended file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BIS to better reflect their business models. Reports may be sent electronically to BIS at crypt@bis.doc.gov (with a copy to the ENC Encryption Request Coordinator at enc@ncsc.mil), or disks and CDs containing the reports may be mailed to the following addresses:

(i) Department of Commerce
Bureau of Industry and Security
Office of Strategic Trade and Foreign
Policy Controls
14th Street and Pennsylvania Ave., N.W.,
Room 2705
Washington, D.C. 20230
Attn: Encryption Reports

(ii) A copy of the report should be sent to:
Attn: ENC Encryption Request Coordinator

9800 Savage Road, Suite 6131
Ft. Meade, MD 20755-6000

that no objections were raised (if no contract is required); and

(5) You notify BIS prior to exporting or reexporting according to the procedures set forth in paragraph (c) of this section. If you intend to engage in multiple shipments during the one-year period after the signing of the contract, you need only notify BIS prior to the first shipment.

(b) Restrictions

(1) No export or reexport to any individual or entity designated as a Specially Designated Terrorist or Foreign Terrorist Organization may be made under License Exception AGR (see part 744 of the EAR).

(2) No export or reexport to or for use in biological, chemical, nuclear warfare or missile proliferation activities may be made under License Exception AGR (see part 744 of the EAR).

(3) No U.S.-owned or controlled foreign firm may export from abroad to Cuba a foreign produced agricultural commodity containing more than 10% U.S.-origin content. Such U.S.-owned or controlled foreign firms require a specific license from BIS as well as the Department of the Treasury's Office of Foreign Assets Control (OFAC). Transactions not subject to the EAR (under 10% U.S.-origin content) require a license from OFAC.

(c) Prior notification

(1) **General requirement.** You must notify BIS prior to any export or reexport (or prior to the first of multiple shipments) under License Exception AGR.

(2) **Procedures.** You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed Multipurpose Application Form (BIS-748P) or its electronic equivalent. The

§740.18

AGRICULTURAL COMMODITIES (AGR)

(a) Eligibility requirements

License Exception AGR permits the export of agricultural commodities to Cuba, as well as the reexport of U.S. origin agricultural commodities to Cuba, provided your transaction meets *all* of the following criteria:

(1) The commodity meets the definition of "agricultural commodities" in part 772 of the EAR;

(2) The commodity is EAR99. You must have an official commodity classification of EAR99 from BIS for fertilizers, western red cedar and live horses before you submit a notification under this license exception. See §748.3 of the EAR for information on how to submit a commodity classification request;

(3) The export or reexport is made pursuant to a written contract, except for donations and commercial samples which are not subject to this contract requirement;

(4) The export or reexport is made within 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required). In the case of multiple partial shipments, all such shipments must be made within the 12 months of the signing of the contract or within 12 months of notification

following blocks must be completed, as appropriate, on the Multipurpose Application Form: Blocks 1, 2, 3, 4, 5 (by marking box 5 "Other"), 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BIS has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). BIS will not initiate the registration of an AGR notification unless all requested information on the Multipurpose Application form is complete.

(3) Action by BIS. Within two business days of the registration of the AGR notification, BIS will refer the notification for interagency review, or if necessary return the notification without action (e.g., if the information provided is incomplete). Registration is defined as the point at which the notification is entered into BIS's electronic system.

(4) Review by other departments or agencies. The Departments of Defense, State, and other agencies, as appropriate, may review the AGR notification. BIS must receive department or agency objections within nine business days of the referral. Unlike the provisions described in §750.4(b) of the EAR, there are no provisions for stopping the processing time of the AGR notification. If, within 11 business days after the date of registration, any reviewing agency provides a written objection that the recipient may promote international terrorism or the transaction raises nonproliferation concerns, you may not use License Exception AGR. In such cases, BIS will notify you that a license is required for the export or reexport. BIS will then process the AGR notification as a license application in accordance with the provisions described in §750.4 of the EAR, and the licensing policies set forth in the EAR. At this time, BIS may request additional information. When BIS confirms that no agency has raised an objection within eleven business

days (as described in paragraph (c)(5) of this section), you may proceed with the transaction provided that you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment (unless a donation or commercial sample). (Note that the fact that you have been advised that no agency has objected to the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(5) Status of pending AGR notification requests. You must contact BIS's System for Tracking Export License Applications ("STELA") at (202) 482-2752 for status of your pending AGR notification. (See §750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the AGR notification. If no department or agency objection is raised within 11 business days, STELA will, on the twelfth business day following the date of registration, provide you with confirmation of that fact. You may not proceed with your shipment unless you confirm with STELA that no objection has been raised. BIS will subsequently issue written confirmation to you. If an objection is raised, STELA will indicate that a license is required. The AGR notification will then be processed as a license application. In addition, BIS may provide notice of an objection by telephone, fax, courier service, or other means.

(d) Donations

(1) Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception (except the written contract requirement).

(2) Donations of food items to non-governmental

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organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See §740.12 for eligibility requirements of gift parcels and humanitarian donations under License

Exception GFT.

ADDITIONAL RESTRICTIONS ON USE OF LICENSE EXCEPTION GOV

(a) Items for official use within national territory by agencies of a Cooperating Government

License Exception GOV is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.1.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) "Composite" structures or laminates controlled by 1A002.a, having an organic "matrix" and made from materials listed under 1C010.c or 1C010.d; and

(ii) [RESERVED]

(iii) [RESERVED]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the "development" or "production" of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.1.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed or modified for the "development" of "technology" controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) "Technology", as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the "development" or "production" of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for "software" specially designed for the "development" or "production"

License Exceptions

of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [RESERVED]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the "development" of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the "production" of equipment in 6A002.a.1.c; or

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(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

(b) Diplomatic and consular missions of a cooperating government

License Exception GOV is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.1.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) "Composite" structures or laminates controlled by 1A002.a, having an organic "matrix" and made from materials listed under 1C010.c or 1C010.d; and

(ii) [RESERVED]

(iii) [RESERVED]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

License Exceptions

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the "development" or "production" of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.1.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed or modified for the "development" of "technology" controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) "Technology", as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the "development" or "production" of digitally controlled radio receivers controlled by

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5A001.b.5; or 5D001.a for "software" specially designed for the "development" or "production" of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [RESERVED]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

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(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the “development” of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology

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Note for the “production” of equipment in 6A002.a.1.c; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

SUPPLEMENT NO. 1 TO PART 740

Supplement No. 1 to part 740 is not formatted for this document. Please see file 740spir.

**ITEMS THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER THE
HUMANITARIAN LICENSE EXCEPTION**

(a) Health

Equipment for the Handicapped
Hospital Supplies and Equipment
Laboratory Supplies and Equipment
Medical Supplies and Devices
Medicine-Processing Equipment
Medicines
Vitamins

Water Resources Equipment

Food

Agricultural Materials and Machinery Suited to
Small-Scale Farming Operations

Agricultural Research and Testing Equipment

Fertilizers

Fishing Equipment and Supplies Suited to
Small-Scale Fishing Operations

(b) Food

Insecticides

Pesticides

Seeds

Small-Scale Irrigation Equipment

Veterinary Medicines and Supplies

(c) Clothes and Household Goods

Bedding

Clothes

Cooking Utensils

Fabric

Personal Hygiene Items

Soap-Making Equipment

Weaving and Sewing Equipment

(d) Shelter

Building Materials

Hand Tools

(e) Education

Books

Individual School Supplies

School Furniture

Special Education Supplies and Equipment for the
Handicapped

***(f) Basic Support Equipment and Supplies
Necessary to Operate and Administer
the Donative Program***

Audio-Visual Aids for Training

Generators

Office Supplies and Equipment

LICENSE EXCEPTION ENC COUNTRY GROUP

Austria
Australia
Belgium
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Poland
Portugal
Spain
Sweden
Switzerland
United Kingdom